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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

JOHN F. DUFFY, the Sheriff of San Diego County, California.

*Petitioner,*

v.

THE BARONA GROUP OF THE CAPITAN GRANDE BAND OF MIS-  
SION INDIANS, SAN DIEGO COUNTY, CALIFORNIA,

*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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### **QUESTION PRESENTED**

Whether an Indian bingo operation to be conducted on an Indian Reservation as a money making gambling business is contrary to California public policy and therefore violative of Federal law.

### **PARTIES TO THE PROCEEDINGS**

This litigation was commenced by the filing of a complaint for declaratory and injunctive relief. Petitioner is John F. Duffy, Sheriff of the County of San Diego (hereinafter referred to as the "Sheriff"). Respondent is the Barona Group of the Capitan Grande Band of Mission Indians, San Diego County, California (hereinafter referred to as the "Barona Group").

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PETITION FOR A WRIT OF  
CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR  
THE NINTH CIRCUIT

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**OPINION BELOW**

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 694 F.2d 1185 and is reprinted as Appendix A.

## **JURISDICTION**

The judgment of the Court of Appeals was entered on December 20, 1982. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

## **STATUTES INVOLVED**

The pertinent Federal statutes involved are Public Law 280, codified as 18 U.S.C. § 1162 and 28 U.S.C. § 1360, and the Organized Crime Control Act of 1970, 18 U.S.C. § 1955.

The pertinent State provisions involved are California Constitution, Article IV, § 19; California Penal Code § 326.5; and San Diego County Code of Regulatory Ordinances, §§ 37.101 - 37.317. Both State and Federal statutory provisions are set out in Appendix B.

## **STATEMENT OF THE CASE**

On June 1, 1976, the Board of Supervisors of the County of San Diego duly adopted an ordinance pursuant to Article IV, § 19 of the California Constitution and California Penal Code § 326.5 in order to make the game of bingo for charitable purposes lawful under the terms and conditions of said ordinance. (San Diego County Code of Regulatory Ordinances, §§ 37.101 - 37.317). The ordinance became effective on July 1, 1976 and is presently in full force and effect. The Barona Group is located within an unincorporated area of San Diego County and its land is held in trust by the United States of America.

On April 20, 1981, the Tribe Council of the Barona Group enacted a tribal ordinance authorizing, with certain restrictions, the playing of bingo within the Reservation. The Barona Group subsequently entered into a management agreement with American Amusement Management, Inc. (hereinafter referred to as the

"contractor") to commence a bingo operation on the Reservation. The Barona Group's ordinance did not comply with the laws of the State of California or the Bingo Ordinance of the County of San Diego since it set no limit on prize money for any single game, established time limits for hours of operation broader than those allowed by State law, is operated and staffed by persons other than by an organizing, exempt organization who takes a profit from the activity and conducts the game as a money making gambling business rather than for charity.

On June 25, 1981, the Undersheriff, under the authority of the Sheriff of the County of San Diego, informed representatives of the Barona Group that the Bingo Ordinance of the County of San Diego prohibited the Barona Group's bingo operation. The Sheriff, through the Undersheriff, also stated that the County Bingo Ordinance would be enforced to the extent of entry on the Reservation to cite or arrest the participants in the bingo operation. On July 28, 1982, the Barona Group sought injunctive and declaratory relief against the Sheriff on the ground that the Sheriff is without lawful authority to enforce State or County laws regarding bingo on the Reservation.

On April 22, 1982, the District Court granted the Sheriff's cross-motion for summary judgment and denied the Barona Group's motion for summary judgment.

On December 20, 1982, the Court of Appeals in *The Barona Group of the Capitan Grande Band of Mission Indians, San Diego County, California v. John Duff*, 694 F.2d 1185 (9th Cir. 1982) reversed the District Court's judgment and remanded the matter back to the District Court with judgment to be entered accordingly, which was so entered on February 17, 1983.

## REASONS FOR GRANTING THE WRIT

THE PUBLIC POLICY OF THIS STATE ALLOWS BINGO ONLY FOR CHARITABLE PURPOSES AND NOT AS A LARGE-SCALE MONEY MAKING GAMBLING BUSINESS.

The Ninth Circuit, in *The Barona Group of the Capitan Grande Band of Mission Indians, San Diego County, California v. John Duffy*, 694 F.2d 1185 (9th Cir. 1982) misinterpreted the public policy of this State and misapplied the law as announced in *United States v. Farris*, 624 F.2d 890 (9th Cir. 1980), cert. denied 449 U.S. 1111 (1981). It is the public policy of the State of California that lotteries are prohibited except *bingo for charitable purposes*. (Cal.Const., Art. IV, § 19; California Penal Code § 326.5.) The general prohibition to lotteries specified in the California Constitution is removed only so long as bingo is conducted for charitable purposes. There are no exceptions to this rule. The public policy of this State never intended allowing lotteries, which include bingo, to be conducted for any purpose other than for charity.

The decision of the Court of Appeals misinterprets the public policy of this State. If the stated purpose of the tribal bingo ordinance was to collect money "for the support of programs to promote the health, education and general welfare of the Barona Tribe" as stated by the Court of Appeals, this purpose could be conducted within the limits of the California Constitution and existing California law establishing the public policy of this State. However, the true purpose of the creation of a bingo operation on the Barona Indian Reservation results in the establishment of a large-scale money making gambling business for purposes other than charity. The true intent and purpose of the bingo operation



is shown in the management agreement between the Barona Group and the contractor, which engages the contractor for a twenty-five year period to operate the bingo activity on the Reservation and receive as a management fee forty-five percent (45%) of the net operating profits for each fiscal year. (Management Agreement, §§ 1, 3(a).) Such an operation is without question inconsistent with California public policy.

We emphasize the dissenting opinion in *Seminole Tribe of Florida v. Butterworth*, 658 F.2d 310, 317 (5th Cir. 1981), cert. denied 102 S.Ct. 1717 (1982), which recognized the "public policy" of Florida as prohibiting bingo for purposes other than charity and that the precise kind of bingo operation sought to be conducted, a large-scale money making gambling business, was prohibited by the public policy of Florida.

In *United States v. Farris*, 624 F.2d 890, 894 (9th Cir. 1980), cert. denied 449 U.S. 1111 (1981), the Ninth Circuit concluded that 18 U.S.C. § 1955, prohibiting illegal gambling businesses, applied to Indian Reservations and held that "... Congress did not intend Indians could freely engage in the large-scale gambling business that it forbade to all other citizens." But the Court of Appeals here misapplied the *Farris* decision as to what is the public policy of California and with this decision allows the Barona Group, and all other Indian groups and/or tribes in this and all other states, to engage in money making gambling businesses on Reservation land. This activity is prohibited to the citizens of this State and should also be prohibited to Indians and non-Indians acting on their behalf on Reservation land. As stated in *United States v. Farris*, 624 F.2d 890, 894:

"... Casinos on Indian land would defeat or endanger the federal interests of protecting interstate commerce and pre-

venting the takeover of legitimate organizations by organized crime. We think the following passage from *United States v. Montana* bears repeating:

'We must recognize that in this case, as in others in which we are required to fix the rights and powers of Indians in the latter part of the twentieth century in the light of treaties of an earlier century, our task is to keep faith with the Indian while effectively acknowledging that Indians and non-Indians alike are members of one Nation. Both seek power and gain through identical processes, *viz.* commerce, politics, and litigation. We must, however, live together, a process not enhanced by unbending insistence on supposed legal rights which if found to exist may well yield tainted gains helpful to neither Indians or non-Indians.' "

Since the public policy of California prohibits the type of gambling business conducted, bingo for purposes other than charitable, and since large-scale gambling is dangerous to Federal interests wherever it occurs, then the activity here is a clear violation of the Federal law, 18 U.S.C. § 1955. As concluded in *United States v. Farris*, 624 F.2d 890, 896 (9th Cir. 1980), cert. denied 449 U.S. 1111 (1981):

"In this Circuit, 'the immunity of Indian use of trust property from state regulation [is] based on the notion that trust lands are a Federal instrumentality held to effect the Federal policy of Indian advancement.' *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655, 666 (9th Cir. 1975), cert. denied, 429 U.S. 1038, 97 S.Ct. 731, 50 L.Ed.2d 748 (1977). Under this view, it would be most inappropriate for immunity from, state regulation to *defeat* the federal policies of opposition to large-scale gambling, protection of legitimate organizations from organized-crime infiltration, and promotion of the welfare of Indians. Therefore, we hold that § 1955 extends even to Indians on Indian lands who are immune from state law, . . .".

### CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit.

DATED:     MAR 17 1983

Respectfully submitted,

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(Filed and entered December 20, 1982, Phillip B. Winberry,  
Clerk, U.S. Court of Appeals)

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

THE BARONA GROUP OF THE  
CAPITAN GRANDE BAND OF  
MISSION INDIANS, SAN DIEGO  
COUNTY, CALIFORNIA,

*Plaintiff-Appellant,*

v.

JOHN F. DUFFY, the Sheriff of  
San Diego County, California,  
*Defendant-Appellee.*

No. 82-5408

DC No. CIV 81-710 JNK

OPINION

Appeal from the United States District Court  
for the Southern District of California  
Judith N. Keep, District Judge, Presiding  
Argued and Submitted November 5, 1982

Before: GOODWIN, HUG, and BOOCHEVER, Circuit Judges.  
BOOCHEVER, Circuit Judge:

Barona Group of the Capitan Grande Band of Mission Indians ("Barona") filed suit requesting declaratory and injunctive relief from the enforcement against them of certain county and state laws pertaining to the operation of bingo games by John Duffy, the Sheriff of San Diego County, California (the County). Summary judgment was entered for the County on March 26, 1982, and Barona has appealed. We reverse.

**FACTS**

Barona is an independent Indian Nation recognized by federal statute with its reservation in the County of San Diego. Act of

February 28, 1919, Pub. L. No. 299, 40 Stat. 1206 *amended by* 47 Stat. 146 (1932). On April 20, 1981, the Tribal Council of the Barona Tribe, the Tribe's governing body, enacted a Tribal Ordinance authorizing, with certain restrictions, the playing of bingo within the reservation. The Tribe subsequently entered into a management agreement with American Amusement Management, Inc., to commence a bingo operation within the reservation.

On June 25, 1981, the undersheriff of the County informed representatives of Barona that the bingo ordinance of the County of San Diego prohibited the Tribe's bingo operation. The undersheriff also said that the ordinance would be enforced to the extent of entry on Indian territory to cite or arrest the participants in the bingo operation. The Tribe then sought injunctive and declaratory relief against the Sheriff on the ground that the Sheriff is without lawful authority to enforce the state or county laws regarding bingo on the Barona Reservation.<sup>1</sup>

### STANDARD OF REVIEW

In reviewing a grant of summary judgment, our task is identical to that of the trial court. *State ex rel. Edwards v. Heimann*, 633 F.2d 886, 888 n.1 (9th Cir. 1980). Viewing the evidence *de novo*, in the light most favorable to the party against whom summary judgment is granted, we must determine whether the trial court correctly found that there was no genuine issue of material fact and that the moving party was entitled to judgment as a matter of law. *Heiniger v. City of Phoenix*, 625 F.2d 842, 843 (9th Cir. 1980). The present case is suitable for summary judgment be-

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1. The trial court determined that a case or controversy did exist and we agree. See *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 297-98 (1979).

cause there is no genuine issue of material fact. We reverse, however, on the basis of the legal issues involved.

## DISCUSSION

### I.

#### Statutes Involved

The California legislature, in accordance with state constitutional limitations,<sup>2</sup> adopted Cal. Penal Code § 326.5 (West Supp. 1982) which controls the conduct of bingo games. This statute removes from the general prohibition of various forms of gambling the conduct of bingo games pursuant to city or county ordinance as provided in the California Constitution. The County passed such an ordinance allowing bingo games conducted by certain charitable organizations. Barona contends that these provisions do not apply to them because the state and county lacked a grant of power from the federal government to impose or enforce these laws within the confines of the reservation. The County contends that such power is granted under the Act of August 15, 1953, Pub. L. No. 83-280, 67 Stat. 588 (commonly known as "Public Law 280").

Public Law 280 does provide some applicability of state law over on-reservation activities. Section 4, codified at 28 U.S.C. § 1360, grants states civil jurisdiction over Indian reservations in words that on the surface seem to make all state laws of general

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2. Article IV, § 19 of the California State Constitution states:

(a) The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State.

. . . .

(c) Notwithstanding subdivision (a), the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes.

application effective.<sup>3</sup> The Supreme Court, however, has construed this section to mean that states have jurisdiction only over private civil litigation involving reservation Indians in state court. *Bryan v. Itasca County*, 426 U.S. 373, 385 (1976). Thus, a state may not impose general civil/regulatory laws on the reservation. Section 2 of Public Law 280, codified at 18 U.S.C. § 1162,<sup>4</sup> however, confers on certain states, including California, full criminal jurisdiction over offenses committed by Indians on the reservation. Thus, whether the state and county laws apply to the Tribe's bingo enterprise depends on whether the laws are classified as civil/regulatory or criminal/prohibitory.

## II.

### The Case law

We addressed this issue in *United States v. Marcyes*, 557 F.2d 1361 (9th Cir. 1977). In that case, members of the Puyallup Indian Tribe were convicted for possessing certain unmarked and

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3. Section 4(a), as codified at 28 U.S.C. § 1360(a) (1976), provides:

(a) Each of the States . . . listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed . . . to the same extent that such State . . . has jurisdiction over other civil causes of action, and those civil laws of such State . . . that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the state . . .:

California . . . . All Indian country within the State.

4. Section 2(a), as codified at 18 U.S.C. § 1162(a) (1976), provides:

(a) Each of the States . . . listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed . . . to the same extent that such State . . . has jurisdiction over offenses committed elsewhere within the State . . ., and the criminal laws of such State . . . shall have the same force and effect within such Indian country as they have elsewhere within the State. . . .

California . . . . All Indian country within the State.

unclassified fireworks in violation of Washington State Law. The court was construing the Assimilative Crimes Act, 18 U.S.C. §§ 13, 1152 (1976). That Act was held to have incorporated the general criminal laws of a state, but not the civil/regulatory laws. *Marcy*, 557 F.2d at 1364. In determining that the Washington law was prohibitory rather than regulatory, the court said:

Even though the Washington scheme allows for limited exceptions (i.e., public displays, . . . movies, . . .), its intent is to prohibit the general possession and/or sale of dangerous fireworks and is not primarily a licensing law.

The possession of fireworks is not the same situation encountered in other regulatory schemes such as hunting or fishing, where a person who wants to hunt or fish merely has to pay a fee and obtain a license. The purpose of such statutes is to regulate the described conduct and to generate revenues. In contrast, the purpose of the fireworks laws is not to generate income, but rather to prohibit their general use and possession in a legitimate effort to promote the safety and health of all citizens. Moreover, by allowing appellants to operate their stands on the reservation or in any federal enclave would entirely circumvent Washington's determination that the possession of fireworks is dangerous to the general welfare of its citizens.

*Marcy*, 557 F.2d at 1365. We are confronted with the question of whether the County's bingo laws are similarly prohibitory.

The Fifth Circuit has recently distinguished *Marcy* in determining the scope of Public Law 280 jurisdiction to facts almost identical to the present case. We find *Seminole Tribe of Florida v. Butterworth*, 658 F.2d 310 (5th Cir. 1981), *cert. denied*, 102 S.Ct. 1717 (1982), persuasive. In *Butterworth*, like the present case, pursuant to a state constitutional grant of power, the state statute excepted bingo operations by certain charitable organizations and under certain conditions from a general prohibition of



gambling.<sup>5</sup> The Fifth Circuit determined that whether a statute may be classified as regulatory or prohibitory depended on whether the legislature deemed the activity to be against the public policy of the state. Evaluating the statute, the court determined that the legislature meant only to regulate bingo. The court based this determination on the fact that bingo is allowed in Florida as a form of recreation, that certain worthy organizations are allowed to benefit from bingo and that the state regulates bingo halls only to prevent the game of bingo from becoming a money-making venture. 658 F.2d at 314-15. *Marcy* was distinguished on the basis that the *Marcy* court had found that possession of dangerous fireworks was "generally" prohibited and not merely licensed. This evidenced Washington's public policy against dangerous fireworks.

Another Ninth Circuit case, *United States v. Farris*, 624 F.2d 890 (9th Cir. 1980), *cert. denied*, 449 U.S. 1111 (1981), gives additional support for the "public policy" test. In *Farris*, the court was considering whether the provisions of the Organized Crime Control Act of 1970, 18 U.S.C. § 1955 (1976), could apply to gambling on the Puyallup Indian reservation. The court found that the "violation of the law of state" requirement of § 1955

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5. When the Florida statute was first enacted, it contained no sanctions for its violation. The court recognized in a footnote that this arguably indicates a legislative intent that the statute be construed as regulatory. *Butterworth*, 658 F.2d at 314 n.6. The district court in the present case placed heavy emphasis on this factor in distinguishing the *Butterworth* case. It is clear from the text of the *Butterworth* opinion, however, that the Fifth Circuit did not rely heavily on the presence of penal sanctions in classifying the statute. *Butterworth*, 658 F.2d at 314; *see also Marcy*, 557 F.2d at 1364 (state not allowed to enforce regulatory system on Indian reservation by making criminal failure to comply with regulations). Rather, that court relied on a consideration of a "public policy" test developed from Ninth Circuit cases. Moreover, criminal sanctions had been enacted before the *Butterworth* case was filed, so that the provisions considered by the Fifth Circuit were essentially the same as those of the County's ordinance.

was intended to include in the federal prohibition those gambling operations contrary to state public policy, as was the Puyallup gambling. Based on this analysis, the *Butterworth* court concluded that the state's public policy determines whether the activity is prohibited or regulated.

The scope of Public Law 280 as applied to bingo games is also addressed in *Oneida Tribe of Indians v. Wisconsin*, 518 F.Supp. 712 (W.D. Wis. 1981). In *Oneida* the district court was confronted with a factual situation and state statutory scheme virtually identical to those found in *Butterworth*. Using what it called a *Marcy's/Butterworth* analysis, the *Oneida* court also determined that the bingo laws were regulatory and not prohibitory. The court rested its decision primarily on the fact that the Wisconsin statute only provided penalties for operation of bingo games not in accordance with the statute. The general populace was allowed to *play* at will. Thus, the court reasoned that bingo was not contrary to public policy.

Although the test for determining when a state statutory scheme such as the present one should apply to tribal members on their reservation is not susceptible of easy application, we conclude for a number of reasons that the County's bingo laws are regulatory and of a civil nature.

First, the state statute authorizes bingo operations by tax exempt organizations including, for example, fraternal societies, recreational clubs, senior citizen organizations, real estate boards and labor and agricultural groups. Cal. Penal Code § 326.5(a) (West Supp. 1982). There is no general prohibition against playing bingo as there was against fireworks in *Marcy's*. As in *Butterworth*, the California statute regulates bingo as a money making venture by limiting size of prizes, requiring that all pro-

ceeds be applied to charitable purposes, and requiring that the game be operated by volunteers from the authorized organization. The fact that so many diverse organizations are allowed to conduct bingo operations, albeit under strict regulation, is contrary to a finding that such operations violate California public policy.

Second, as was pointed out in the *Oneida* case, the general public is allowed to play bingo at will in an authorized game. This cuts against a public policy prohibition.

Third, the Supreme Court has laid down several rules of construction applicable to statutes affecting Indian affairs which undercut application of the bingo laws in this case. Ambiguities in statutes concerning dependent tribes are to be resolved in favor of the Indians. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 208 n.17 (1978); *Bryan v. Itasca County*, 426 U.S. 373, 392 (1976). State jurisdiction over reservations, historically, is strongly disfavored. *Bryan*, 426 U.S. at 376 n.2; *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164, 168 (1973). Moreover, enforcement of the bingo laws is contrary to the present federal policy of encouraging tribal self-government. See *United States v. Wheeler*, 435 U.S. 313, 322-26 (1978); *Bryan*, 426 U.S. at 388-89 n.14; see also the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 *et seq.* (1976); Civil Rights Act of 1968, Title IV, 25 U.S.C. §§ 1321-1326 (1976) (requiring tribal consent to further state assumption of jurisdiction under Public Law 280). The decisions addressing similar bingo statutes have acknowledged the closeness of the question, but have found in favor of the reservation Indians on the basis of these strong policies.

Finally, the stated purpose of the tribal bingo ordinance is to collect money "for the support of programs to promote the health, education and general welfare" of the Barona Tribe. This

intent to better the Indian community is as worthy as the other charitable purposes to which bingo proceeds are lawfully authorized under the California statute. Although the Barona bingo operation does not fully comply with the letter of the statutory scheme, it does at least fall within the general tenor of its permissive intent.<sup>5</sup>

### III.

#### **The Federal Organized Crime Control Act**

Appellee argues that it can prohibit the tribal bingo operation under federal law, regardless of whether the state laws are civil or criminal, by reliance on the Organized Crime Control Act of 1970, 18 U.S.C. § 1955 (1976). This federal law incorporates by reference certain state gambling laws and makes the violation of the state provisions a federal offense.

In *United States v. Farris*, 624 F.2d 890 (9th Cir. 1980), *cert. denied*, 449 U.S. 1111 (1981), we held that whether a tribal activity is "a violation of the law of a state" within the meaning of § 1955 depends on whether it is contrary to the "public policy" of the state. *Id.* at 895-96. Thus, *Farris* makes co-extensive the tests for application of state law to Indian reservations under § 1955 and for direct application of state law under Public Law 280. Because we have concluded that bingo games are not contrary to the public policy of California, the activity is not violative of § 1955.

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5. The trial court emphasized that the statutory scheme is not for the purpose of licensing or raising revenue. But as the *Butterworth* court recognized, "[r]egulation may appear in forms other than licensing, and the fact that a form of gambling is self-regulated as opposed to state-regulated through licensing does not require ruling that the activity is prohibited." 658 F.2d at 315. Further, zoning laws do not license and do not raise revenue, but have been held regulatory and inapplicable to Indian reservations. *United States v. County of Humboldt*, 615 F.2d 1260 (9th Cir. 1980).

The summary judgment is reversed and the case is remanded for the purpose of entering judgment for Barona.

**REVERSED and REMANDED.**

**18 USC § 1162. State jurisdiction over offenses committed by or against Indians in the Indian country**

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

<b>State or Territory of</b>	<b>Indian country affected</b>
Alaska.....	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended
California.....	All Indian country within the State
Minnesota.....	All Indian country within the State, except the Red Lake Reservation
Nebraska.....	All Indian country within the State
Oregon.....	All Indian country within the State, except the Warm Springs Reservation
Wisconsin.....	All Indian country within the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property

in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

**28 USC § 1360. State civil jurisdiction in actions to which  
Indians are parties**

(a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

<b>State or Territory of</b>	<b>Indian country affected</b>
Alaska.....	All Indian country within the Territory
California.....	All Indian country within the State
Minnesota.....	All Indian country within the State, except the Red Lake Reservation
Nebraska.....	All Indian country within the State
Oregon.....	All Indian country within the State, except the Warm Springs Reservation
Wisconsin.....	All Indian country within the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

#### **18 USC § 1955. Prohibition of illegal gambling businesses**

(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than \$20,000 or imprisoned not more than five years, or both.

(b) As used in this section—

(1) "illegal gambling business" means a gambling business which—

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and



(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.

(2) "gambling" includes but is not limited to pool-selling, book-making, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

(3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of \$2,000 in any single day shall be deemed to have been established.

(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizure, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person

in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

(e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity.

**Cal. Const., Art. IV. Lotteries; horse races, horse race meetings and bingo games**

Sec. 19. (a) The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State.

(b) The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results.

(c) Notwithstanding subdivision (a), the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes.

**Cal. Penal Code § 326.5. Bingo games for charity**

(a) Neither this chapter nor Chapter 10 (commencing with Section 330) applies to any bingo game which is conducted in a city, county, or city and county pursuant to an ordinance enacted

under Section 19 of Article IV of the State Constitution, provided that such ordinance allows games to be conducted only by organizations exempted from the payment of the bank and corporation tax by Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, and 23701i of the Revenue and Taxation Code and by mobilehome park associations and senior citizens organizations; and provided that the receipts of such games are used only for charitable purposes.

(b) It is a misdemeanor for any person to receive or pay a profit, wage, or salary from any bingo game authorized by Section 19 of Article IV of the State Constitution. Security personnel employed by the organization conducting the bingo game may be paid from the revenues of bingo games as provided in subdivisions (j) and (k).

(c) A violation of subdivision (b) of this section shall be punishable by a fine not to exceed ten thousand dollars (\$10,000), which fine shall be deposited in the general fund of the city, county, or city and county which enacted the ordinance authorizing the bingo game. A violation of any provision of this section, other than subdivision (b), is a misdemeanor.

(d) The city, county, or city and county which enacted the ordinance authorizing the bingo game may bring an action to enjoin a violation of this section.

(e) No minors shall be allowed to participate in any bingo game.

(f) An organization authorized to conduct bingo games pursuant to subdivision (a) shall conduct a bingo game only on property owned or leased by it, or property whose use is donated to the organization, and which property is used by such organiza-

tion for an office or for performance of the purposes for which the organization is organized. Nothing in this subdivision shall be construed to require that the property owned or leased by or whose use is donated to the organization be used or leased exclusively by or donated exclusively to such organization.

(g) All bingo games shall be open to the public, not just to the members of the authorized organization.

(h) A bingo game shall be operated and staffed only by members of the authorized organization which organized it. Such members shall not receive a profit, wage, or salary from any bingo game. Only the organization authorized to conduct a bingo game shall operate such game, or participate in the promotion, supervision, or any other phase of such game. This subdivision does not preclude the employment of security personnel who are not members of the authorized organization at such bingo game by the organization conducting the game.

(i) No individual, corporation, partnership, or other legal entity except the organization authorized to conduct a bingo game shall hold a financial interest in the conduct of such bingo game.

(j) With respect to organizations exempt from payment of the bank and corporation tax by Section 23701d of the Revenue and Taxation Code, all profits derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. Such profits shall be used only for charitable purposes.

(k) With respect to other organizations authorized to conduct bingo games pursuant to this section, all proceeds derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. Proceeds are

the receipts of bingo games conducted by organizations not within subdivision (j). Such proceeds shall be used only for charitable purposes, except as follows:

(1) Such proceeds may be used for prizes.

(2) A portion of such proceeds, not to exceed 20 percent of the proceeds before the deduction for prizes, or one thousand dollars (\$1,000) per month, whichever is less, may be used for rental of property, overhead, including the purchase of bingo equipment, administrative expenses, security equipment, and security personnel.

(3) Such proceeds may be used to pay license fees.

## **San Diego County Code of Regulatory Ordinances**

### **CHAPTER 3**

### **BINGO AND SIMILAR GAMES**

**Sec. 37.301. PROHIBITED GAMES.** It shall be unlawful for any person to set up, manage, conduct or maintain any game, machine or enterprise wherein:

(a) A consideration is paid by the player;

(b) Prizes are awarded as determined by skill or by any combination of skill and chance; and

(c) Said game, machine or enterprise is played concurrently with or alternately or in conjunction or connection with:

(1) Any lottery;

(2) Any game of chance, whether or not a consideration is paid for playing the game of chance.

**Sec. 37.302. (Repealed by Ord. No. 4863 (N.S.) Eff. 3-31-77)**

**Sec. 37.303. FREE GAMES AS ENTICEMENT PROHIBITED.** It shall be unlawful for any person to set up, manage, conduct or maintain any combination of games, machines or enterprises wherein games of chance and games of skill are alternated or played in any sequence with each other so that free games are used to entice or allure players into the playing for a consideration of paid games of skill or paid games combining the element of chance with the element of skill.

**Sec. 37.304. SPECIFIC GAMES PROHIBITED.** This chapter is intended to prohibit the playing of "bingo", "tango", "bridgo", "skill ball" or any game or combination of games similar in operation to such games, and to apply to free as well as to paid playing of such games.

**Sec. 37.305. BINGO AUTHORIZED.** Notwithstanding any other provisions of this Chapter, this ordinance is adopted pursuant to section 19 of Article IV of the California Constitution in order to make the game of bingo lawful under the terms and conditions in the following sections of this Chapter.

**Sec. 37.306. DEFINITIONS.** Whenever in this chapter the following terms are used they shall have the meanings respectively ascribed to them in this section.

(a) Bingo is a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random. The game of bingo shall also include cards having numbers or symbols which are concealed and preprinted in a manner providing for distribution of prizes. The winning cards shall not be known prior to the game by any person participating in the playing or

operation of the bingo game. All such preprinted cards shall bear the legend for sale or use only in a bingo game authorized under California law and pursuant to local ordinance.

(b) Authorized organization is an organization exempted from the payment of the bank and corporation tax by Section 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, or 23701l of the Revenue and Taxation Code. Authorized organization also includes a senior citizens organization and a mobilehome park association.

(c) Minor is any person under the age of eighteen (18) years.

**Sec. 37.307. LICENSE.** A license shall only be issued to a person who is a member of an authorized organization and is acting on behalf of such authorized organization. The procedure to follow, except as otherwise herein provided, in obtaining a license is that set forth in the Uniform Licensing Procedure Sections 16.101-16.115.

**Sec. 37.308. APPLICATION-CONTENTS.** The applications shall be filed not less than ten days prior to the proposed date of the bingo game or games. Such application form shall require from the applicant at least the following:

(a) A list of all members who will operate the bingo game, including full names of each member, date of birth, place of birth, physical description and driver's license number.

(b) The date(s) and place(s) of the proposed bingo game or games.

(c) Proof that the organization is an authorized organization as defined in this chapter.

**Sec. 37.309. TERM OF LICENSE AND FEES.** The term of a bingo license is one (1) year.

The fee for a bingo license shall be fifty dollars (\$50), twenty-five (\$25) of which shall be refunded if the application for license is denied. An additional fee of one percent (1%) of the monthly gross receipts over five thousand dollars (\$5,000) derived from bingo games shall be collected monthly by the Issuing Officer.

**Sec. 37.310.** (Repealed by Ord. No. 5200 (N.S.) Eff. 8-10-78).

**Sec. 37.311.** (Repealed by Ord. No. 5200 (N.S.) Eff. 8-10-78).

**Sec. 37.312. LIMITATIONS.** An authorized organization shall conduct a bingo game only on property that has been owned or leased by it or on property whose use has been donated to the organization for a period of not less than twelve (12) months immediately preceding the filing of an application to conduct bingo, and which property is used by such organization for an office or for the performance of the purposes for which the organization is organized. Nothing in this section shall be construed to require that the property owned or leased by or whose use is donated to the organization be used or leased exclusively by or donated exclusively to such organization.

(a) No minors shall be allowed to participate in any bingo games.

(b) All bingo games shall be open to the public, not just to the members of the authorized organization.



(c) A bingo game shall be operated and staffed only by members of the authorized organization. Such members shall be approved by the Sheriff. If, after the license has been issued, the authorized organization submits additional names to the Sheriff for approval, the application for approval shall be accompanied by a fee of five dollars (\$5.00) for each name, no part of which shall be refundable, and which shall be used to defray the cost of investigation. Such members shall not receive a profit, wage or salary from any bingo game. Only the organization authorized to conduct a bingo game shall operate such game or participate in the promotion, supervision or any other phase of such game. This section does not preclude the employment of security personnel who are not members of the authorized organization at such bingo game by the organization conducting the game.

(d) No individual, corporation, partnership, or other legal entity except the organization authorized to conduct a game shall hold a financial interest in the conduct of such bingo game.

(e) With respect to organizations exempt from payment of the bank and corporation tax by Section 23701d of the Revenue and Taxation Code, all profits derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. Such profits shall be used only for charitable purposes. With respect to other organizations authorized to conduct bingo games, all proceeds derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. Such proceeds shall be used only for charitable purposes, except as follows:

- (1) Such proceeds may be used for prizes.

- (2) A portion of such proceeds, not to exceed twenty

percent (20%) of such proceeds before the deduction for prizes, or one thousand (\$1,000) dollars per month, whichever is less, may be used for the rental of property, overhead, including the purchase of bingo equipment, administrative expenses, security equipment and security personnel.

(3) Such proceeds may be used to pay license fees. Within thirty (30) days after the bingo game is held the applicant will file with the Sheriff a full and complete financial statement of all monies collected, disbursed and the amount remaining for charitable purposes.

(f) No person shall be allowed to participate in a bingo game unless the person is physically present at the time and place in which the bingo game is being conducted.

(g) The total value of prizes awarded during the conduct of any bingo games shall not exceed two hundred fifty dollars (\$250) in cash or kind, or both, for each separate game which is held.

(h) No bingo game shall be conducted between the hours of midnight and 8:00 a.m.

(i) The licensee may conduct bingo on not more than three (3) days during any seven (7) day period. Once during each year the Issuing Officer may permit a licensee to conduct bingo games for more than three (3) days during any seven (7) day period, provided that such permission shall be limited to bingo games which will be conducted in conjunction with an established annual event regularly held by the licensee.

**Sec. 37.313. INSPECTION.** Any peace officer of the County shall have free access to any bingo game licensed under this

chapter. The licensee shall have the bingo license and lists of approved staff available for inspection at all times during any bingo game.

**Sec. 37.314.** (Repealed by Ord. No. 5290 (N.S.) Eff. 11-30-78).

**Sec. 37.315.** (Repealed by Ord. No. 5200 (N.S.) Eff. 8-10-78).

**Sec. 37.316. VIOLATION AND PENALTIES.**

(a) It is unlawful for any person to receive a profit, wage or salary from any bingo game authorized by this chapter.

(b) Any person violating any of the provisions or failing to comply with any of the requirements of this chapter shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine not to exceed five hundred dollars (\$500) or by imprisonment in the County jail for a period of not more than six (6) months or by both such fine and imprisonment.

All sanctions provided herein shall be cumulative and not exclusive.

**Sec. 37.317. SEVERABILITY.** If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of applications of the provisions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are hereby declared to be severable.

No. ....

IN THE  
SUPREME COURT OF THE  
UNITED STATES  
OCTOBER TERM, 1982

JOHN F. DUFFY, the Sheriff of San Diego County, California,  
*Petitioner,*

v.

THE BARONA GROUP OF THE CAPITAN GRANDE BAND  
OF MISSION INDIANS, SAN DIEGO COUNTY, CALIFOR-  
NIA,

*Respondent.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 18th day of March 1983, three copies of the Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit were mailed, postage prepaid, to Harrison W. Hertzberg, Esq., HERTZBERG & HERTZBERG, 3550 Wilshire Boulevard, Suite 1418, Los Angeles, CA 90010, Counsel for the Respondent. I further certify that all parties required to be served have been served.

JOSEPH KASE, JR., County Counsel (Acting)  
County of San Diego  
355 County Administration Center  
San Diego, CA 92101  
Telephone: (619) 236-3651  
*Attorney for Petitioner*